

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**DANIEL LOVELACE and HELEN
LOVELACE, Individually, and as Parents
of BRETT LOVELACE, deceased,**

Plaintiffs,

v.

**PEDIATRIC ANESTHESIOLOGISTS,
P.A., BABU RAO PAIDIPALLI, and
MARK P. CLEMONS,**

Defendants.

NO. 2:13-cv-002289-JPM-dkv

**STATE OF TENNESSEE’S MOTION TO INTERVENE AS A
MATTER OF RIGHT AND MEMORANDUM OF LAW IN SUPPORT**

The State of Tennessee, through the Office of the Attorney General and Reporter, moves to intervene in this action pursuant to Fed. R. Civ. P. 5.1 and 24 for the sole purpose of defending the constitutionality of Tenn. Code Ann. § 29-26-121 and the Tennessee Health Care Liability Act (formerly known as the “Medical Malpractice Act”), Tenn. Code Ann. §§ 29-26-101 through 29-26-122, which have been challenged by Plaintiffs in this action. On July 19, 2013, Plaintiffs challenged the subject statutes in Docket Entry Nos. 29 and 30. The State of Tennessee respectfully requests that this Court permit its intervention.

MEMORANDUM OF LAW IN SUPPORT

A state is permitted to intervene in an action when there is a constitutional question regarding one of its statutes. 28 U.S.C. § 2403(b). A court “shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.” *Id.* The Tennessee Attorney General and Reporter has a

statutory duty to defend the constitutionality and validity of Tennessee legislation. Tenn. Code Ann. § 8-6-109(b)(9).

Intervention is a matter of right and a court must permit intervention when a party “is given an unconditional right to intervene by a federal statute.” Fed. R. Civ. P. 24(a)(1). Intervention is timely within 60 days after a notice of constitutional question is filed or after the court certifies the challenge, whichever is earlier. Fed. R. Civ. P. 5.1(c).

In the instant case, Plaintiffs challenged Tennessee statutes in Docket Entry Nos. 29 and 30, which were filed on July 19, 2013. Plaintiffs served notice of their challenge to the Tennessee Attorney General and Reporter on July 22, 2013. Accordingly, this motion is timely.

CONCLUSION

Premises considered, the State of Tennessee respectfully requests that this Court grant its Motion to Intervene so that it may defend the constitutionality of Tenn. Code Ann. § 29-26-121 and the Tennessee Health Care Liability Act (formerly known as the “Medical Malpractice Act”), Tenn. Code Ann. §§ 29-26-101 through 29-26-122.

CERTIFICATE OF CONSULATION

Pursuant to Local Rule 7.2, the undersigned counsel certifies that all other parties are in agreement with the action requested by this motion. The undersigned counsel sent an e-mail on August 27, 2013, at 6:00 p.m. to all counsel of record and received responses via e-mail stating agreement with the State’s Motion to Intervene from the following attorneys: Mark Ledbetter, David Cook, Albert McLean, Johnson Kimbrough, and Marcy Magee.

s/ STEPHANIE A. BERGMAYER
STEPHANIE A. BERGMAYER

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was filed electronically and the parties below were served through the Court's electronic filing system on this 28th day of August, 2013:

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